



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,061	01/20/2004	Maurice Blanchette	16231-1US SC/sm	6678
20988	7590	05/09/2006	EXAMINER	
OGILVY RENAULT LLP 1981 MCGILL COLLEGE AVENUE SUITE 1600 MONTREAL, QC H3A2Y3 CANADA			GABLER, PHILIP FRANCIS	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 05/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/759,061	Applicant(s) BLANCHETTE, MAURICE	
	Examiner Philip Gabler	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mattick (US Patent Number 3420484) in view of Shelton (US Patent Number 2238348). Mattick (Figures 1-3 and 5) discloses a platform assembly (T, Mattick's Figure 1) comprising a weldless frame (components S and L) including at least three profiles (S) bolted together so as to define a part of a floor, said at least three profiles each include a folded sheet forming a beam member (S) of a predetermined cross-section, a support column (L) at each corner of said frame, said support column being bolted to said weldless frame. Mattick does not disclose a guard rail or a specific material for construction, but does disclose the use of metal. Note that the claim recites a product by process limitation ("cold-formed"). The product itself does not depend on the process of making it and this limitation would not be expected to impart distinctive structural characteristics to the device. Shelton discloses (Figures 1 and 7) a guard rail projecting upwardly from a portion of a surface (10). Further, the use of steel sheet is well known in the art. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mattick's platform to include a

Art Unit: 3637

guard rail assembly as taught by Shelton because this would keep objects from falling from the platform (see Shelton column 1 lines 50-51), as well as using steel in the construction of the assembly because of its low cost and high strength.

3. Regarding claim 3, Mattick further discloses profiles (S) that are C-shaped in cross section (see Figure 2) and wherein an open side of said profiles faces inwardly of said weldless frame.

4. Regarding claim 4, Mattick further discloses profiles (S) provided with connecting tabs (16) at opposed longitudinal ends thereof, each of said connecting tabs defining a number of holes (14) and (17) for receiving fasteners in order to achieve mechanical connections between the profiles.

5. Regarding claim 5, Mattick further discloses connecting tabs that are folded at 90 degrees (indicated by A in Exhibit 1).

6. Regarding claim 6, Mattick further discloses support columns (L) with two open sides (opposite of sides 3).

7. Regarding claim 7, Mattick further discloses that the open sides face inwardly of said weldless frame (see Figure 2).

8. Regarding claim 8, Mattick further discloses support columns with first and second elongated folds (B and D) oriented at about 90 degrees with respect to each other, said first and second folds having terminal edge portions merging into flanges (6) oriented at about 90 degrees to respective folds (in as much as Applicant's invention).

9. Regarding claim 9, Mattick further discloses a corner brace (G) at each corner of said frame, each brace being bolted to adjacent profiles extending from the corner.

Art Unit: 3637

10. Regarding claim 10, Mattick, when modified by Shelton as described above, discloses a number of guard rail posts (Shelton's 24), said guard rail post being made from C-shaped profiles. Note that this claim recites a product by process limitation ("cut and folded"). The product itself does not depend on the process of making it and this limitation would not be expected to impart distinctive structural characteristics to the device.

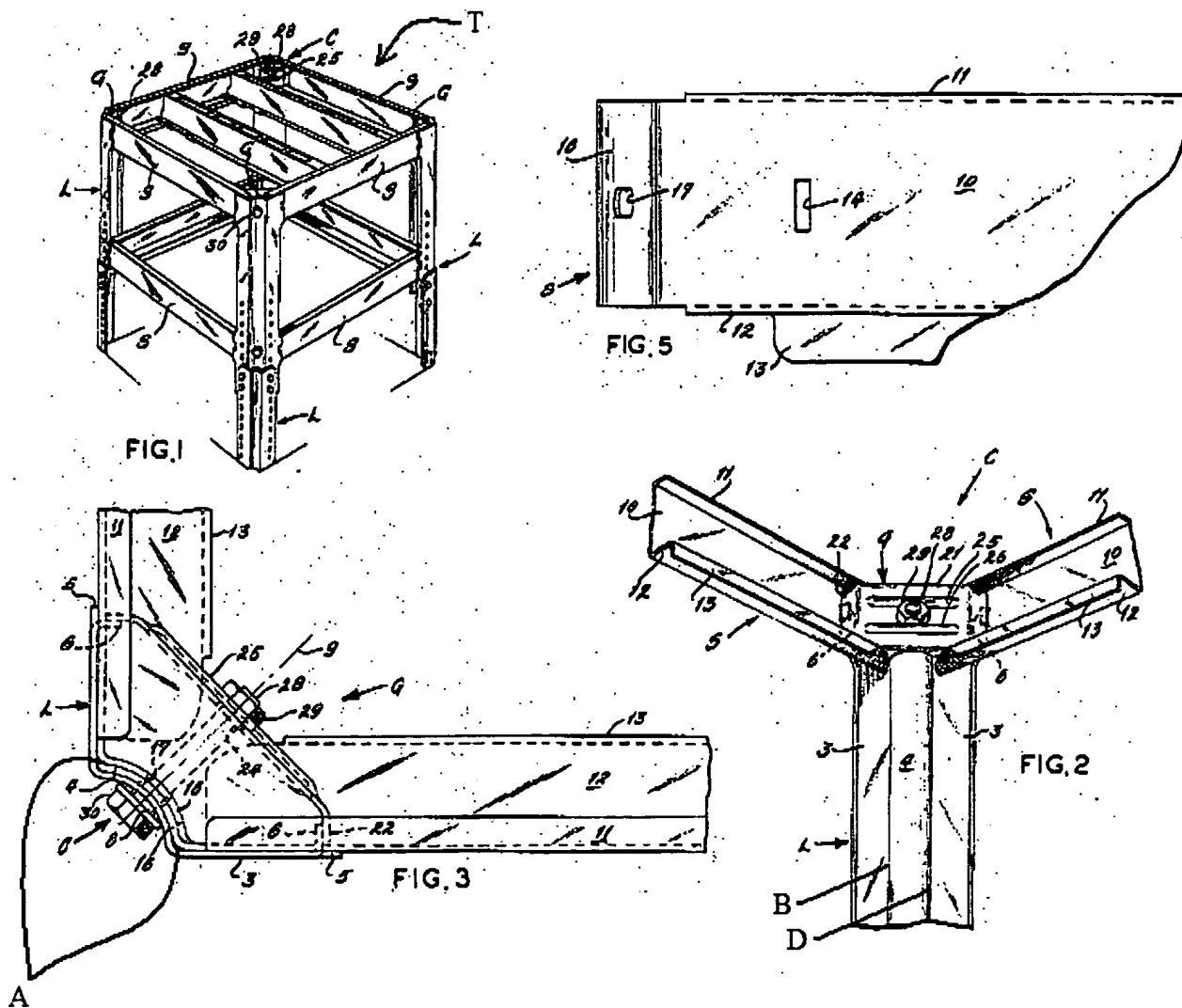
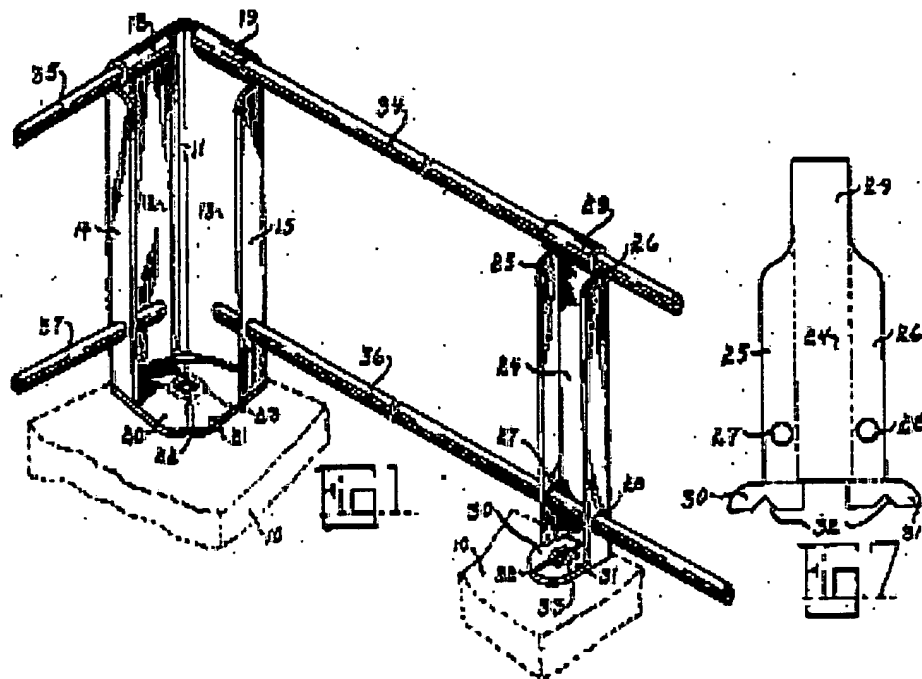


Exhibit 1: Mattick '484 Figures 1-3 and 5

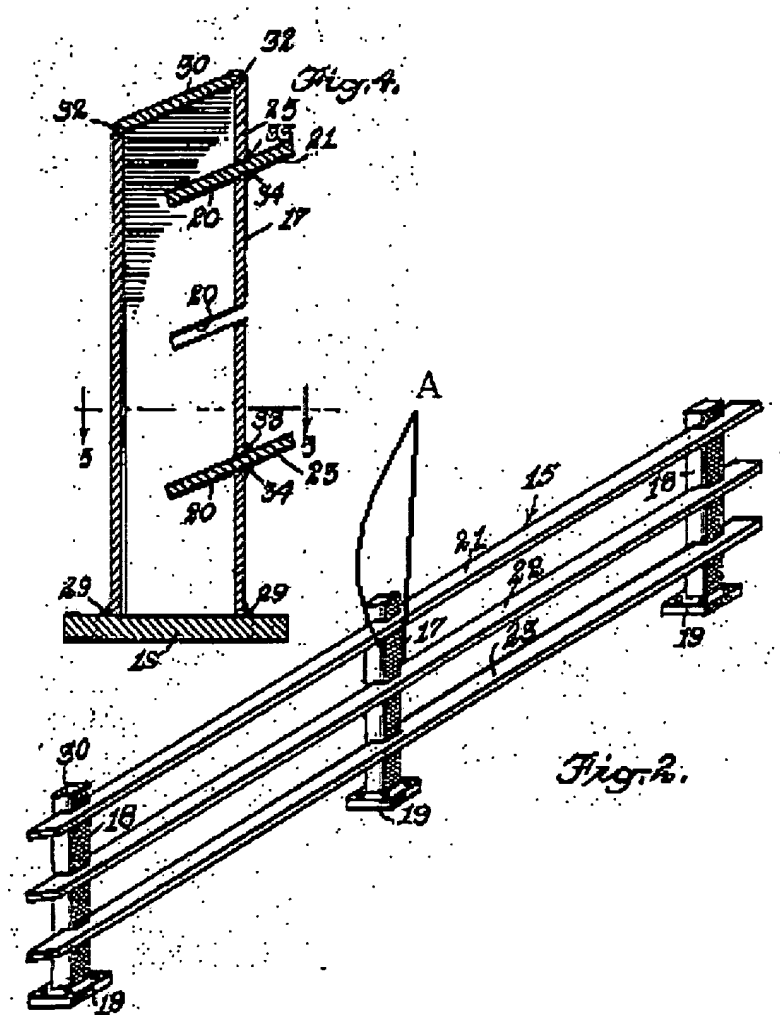


Shelton '348 Figures 1 and 7

11. Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mattick in view of Shelton and further in view of Diamond (US Patent Number 2733897). Mattick, when modified by Shelton as described above, discloses a platform as recited in claim 10 but does not disclose a hole extending through fold lines defining a receiving cavity. Diamond (Figures 2 and 4) discloses a guard rail post having two parallel longitudinal folds (viewed as A in Exhibit 2) and wherein an oblong hole (20) extends transversely through said folds to define a rail receiving cavity on a back side of the post. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mattick's platform, previously modified by Shelton, to include an oblong hole through the post (by simply connecting Shelton's

Art Unit: 3637

holes 27 and 28) to receive a rail as taught by Diamond because this arrangement would provide a simpler method of mounting rails to the guard rail post.



Diamond '897 Figures 2 and 4

12. Regarding claim 12, Shelton further discloses a solid tubular rail (36) mounted in his receiving cavity. Note that this claim recites a product by process limitation ("welded"). The product itself does not depend on the process of making it and this

Art Unit: 3637

limitation would not be expected to impart distinctive structural characteristics to the device.

13. Regarding claim 13, Shelton further discloses a depression (29) defined at the top end of the guard rail post extending across said folds so as to define a seat for receiving a hand rail.

Response to Arguments

14. Applicant's arguments, see page 1 of the remarks, filed 28 March 2006, with respect to objection to the specification and the 35 USC 112 rejection of claim 8 have been fully considered and are persuasive. The objection to the specification and the 35 USC 112 rejection of claim 8 have been withdrawn.

15. The remainder of Applicant's arguments filed 28 March 2006 have been fully considered but they are not persuasive. Regarding the distinction between an industrial platform assembly and a table, Applicant's claim is directed to an assembly (which Mattick's table clearly is), effectively rendering the argument moot. The term "industrial platform" appearing in the preamble does not define any structure and is given little patentable weight. Further, Mattick's table would be capable of functioning as a platform in an industrial environment.

16. Regarding the assertion that Mattick's frame components 6 and 10 are welded together, this is simply not the case. In fact, Mattick describes multiple methods of forming this joint (tab 6 into slot 14 of portion 10), none of which include welding (see for example column 4 line 72 to column 5 line 31).

17. Regarding the structural characteristics of cold-formed products, without disclosure of how these characteristics structurally define the invention within the submitted disclosure, it cannot be expected that these limitations will be implied by the claim language as written. Accordingly, this product by process limitation has again not been expected to impart distinctive structural characteristics to the device.

18. Regarding the suggestion that there is no motivation to mount a guard rail around a table, Shelton's disclosure (column 1 lines 48-51) is again cited. Clearly there exists a desire "in display racks, counters, shelving, **and the like**," (which would certainly encompass tables) to "place a multiplicity of rails... in order to keep merchandise from falling from the supporting surface."

Conclusion

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3637

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Gabler whose telephone number is (571) 272-6038. The examiner can normally be reached on Monday through Friday, 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PFG

5/2/2006



JAMES O. HANSEN
PRIMARY EXAMINER